In The

Court of Appeals
Fifth District of Texas at Dallas

NO. 05-19-00607-CV

PETER BEASLEY, Appellant
v.
SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER, JANIS O'BRYAN AND NELLSON BURNS, Appellees

On Appeal from the 191st Judicial District Court,
Dallas County, Texas
Trial Court Cause No. DC-18-05278

APPELLEES' RESPONSE BRIEF

Respectfully submitted,

GORDON & REES

/s/ Robert A. Bragalone

ROBERT A. BRAGALONE
State Bar No. 02855850
BBragalone@grsm.com
SOÑA J. GARCIA
State Bar No. 24045917
SJGarcia@grsm.com
2200 Ross Avenue, Suite 4100 West
Dallas, Texas 75201-2708
214-231-4660 (Telephone)
214-461-4053 (Facsimile)

FOLEY GARDERE
FOLEY & LARDNER LLP

PETER S. VOGEL
State Bar No. 20601500
PVogel@Foley.com
2021 McKinney Ave. Ste. 1600
Dallas, Texas 75201
214-999-3000 (Telephone)
214-999-4667 (Facsimile)

ATTORNEYS FOR DEFENDANTS

IDENTITIES OF PARTIES AND COUNSEL

Society for Information Management, Dallas Area Chapter ("SIM-DFW"), a Texas non-profit corporation, Janis O'Bryan, an individual, and Nellson Burns, an individual.

In the trial court the appellees/defendants were represented by the following attorneys:

Robert A. Bragalone
Soña J. Garcia
GORDON & REES
2200 Ross Avenue, Suite 4100 West
Dallas, Texas 75201-2708
214-231-4660 (Telephone)
214-461-4053 (Facsimile)

Peter S. Vogel
FOLEY GARDERE
FOLEY & LARDNER LLP
2021 McKinney Ave. Ste. 1600
Dallas, Texas 75201
214-999-3000 (Telephone)
214-999-4667 (Facsimile)

Appellees/Defendants are represented by the same attorneys in this appeal.[1]

Peter Beasley

In the trial court, the appellant/plaintiff was represented at various times by the following persons. At the time the trial court dismissed appellant/plaintiff's claims, he was represented by Ms. Daena Ramsey and Mr. Andrew Gardner. Appellant/Plaintiff currently is *pro se*.

[1] Appellees were also represented by the same counsel in *Beasley v. Society of Information Management, et al.,* Cause No. DC-16-03141, in the 162nd Judicial District Court of Dallas County, Texas appealed in *Beasley v. Society of Information Management et al.,* 2018 Tex.App. LEXIS 8993 (Tex.App.—Dallas Nov. 1, 2018), petition for review pending, Cause No. 19-0041.

Peter Beasley, *pro se*
P.O. Box 831359
Richardson, TX 75083-1359
(972) 365-1170

R. Rogge Dunn
John M. Lunch
Rogge Dunn Group, PC
1201 Elm Street, Suite 5200
Dallas, Texas 75201
(214) 888-5000

Daena Ramsey
Andrew Gardner
Vaughn & Ramsey
2000 E. Lamar Blvd.
Suite 430
Arlington, TX
(972) 262-0800

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I.
STATEMENT OF THE CASE

It is doubtful that this Court has seen a litigant as vexatious as Appellant in its long and distinguished existence. Appellant Peter Beasley originally filed his claims against SIM-DFW on March 17, 2016 as Cause No. DC-16-03141 in the 162nd Judicial District Court of Dallas County, Texas ("Original Case").[2] The parties litigated the Original Case for 18 months when, on the eve of Defendant SIM-DFW's Motion for Summary Judgment, and on the very the due date for his response, Beasley abruptly nonsuited without prejudice his claims and those of his company, Netwatch Solutions, on October 5, 2016.[3]

In true vexatious fashion, he then sued all over again. The case on appeal was filed November 30, 2017 ("2017 Case") in Collin County, Texas, alleging claims that all arose out of the same circumstances alleged by Beasley's Original Case.[4] The 2017 Case was transferred to Dallas County following Appellees' Motion to Transfer Venue.[5]

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[2] This Court may take judicial notice of the proceedings styled *Beasley v. Society of Information Management, et al.,* Cause No. DC-16-03141, in the 162nd Judicial District Court of Dallas County, Texas appealed in *Beasley v. Society of Information Management et al.,* 2018 Tex.App. LEXIS 8993 (Tex.App.—Dallas Nov. 1, 2018) , petition for review pending, Cause No. 19-0041.

[3] *Id.*

[4] CR 6 (docket sheet noting filing date of Plaintiff's Original Petition).

[5] CR 661-662.

Appellees moved to declare Beasley a vexatious litigant on April 19, 2018.[6] The trial court heard Appellees' motion on September 20, 2018[7] and on December 11, 2018, issued an order (the "Vex Order") finding that Beasley is a vexatious litigant within the meaning of TEX. CIV. PRAC. & REM. CODE § 11.054.[8] The December 11, 2018 order included the language pursuant to § 11.101 prohibiting Beasley from *pro se* filing new litigation without permission from the appropriate local administrative judge.[9] Beasley is now listed on the Texas Office of Court Administration List of Vexatious Litigants Subject to Prefiling Orders.[10]

The Vex Order also required Beasley to pay $422,064.00 as security to continue his suit against Appellees.[11] Beasley failed to pay the required security and his case against Appellees was dismissed, with prejudice, on June 11, 2019.[12]

Beasley has filed multiple notices of appeal on both the Vex Order and the final order of dismissal. He initially filed a notice of *interlocutory* appeal challenging the prefiling prohibition of the Vex Order on May 21, 2019,[13] more than *five months*

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[6] CR 663-989; 1001-1056.

[7] RR Vol. 1.

[8] CR 1259-1260.

[9] *Id.*

[10] *See* http://www.txcourts.gov/judicial-data/vexatious-litigants/, last visited Nov. 17, 2019.

[11] CR 1259-1260.

[12] 2nd Supp CR 134.

[13] CR 1342-1344.

after the Vex Order was entered. He filed his *second* notice of appeal, again on the prefiling prohibition, on May 27, 2019.[14] He filed an *amended* notice of appeal on July 16, 2019[15] and he filed a *final amended notice of partial appeal* on August 22, 2019.[16] Beasley also filed a notice of appeal on September 8, 2019[17] addressing the security requirement in the Vex Order and the June 11, 2019 order of dismissal.

This Court consolidated the two appeals on September 17, 2019.

II.
STATEMENT REGARDING ORAL ARGUMENT

The issues in this appeal are neither novel nor complex. The law and the record clearly support the trial court's determination that Appellant is a vexatious litigant as that term is defined by TEX. CIV. PRAC. & REM. CODE § 11.054, and is the appropriate subject of a prefiling order pursuant to TEX. CIV. PRAC. & REM. CODE § 11.101.

Moreover, Beasley's briefing raises topics wholly unrelated to legal issues which are presented to this Court. In his Second Amended Brief on the Merits

[14] CR 1345.

[15] 2nd Supp CR 23 (docket entry)

[16] 2nd Supp CR 307-309.

[17] Oct. 28, 2019 Supp. CR Vol. 3 135-136.

Beasley invokes race-based rhetoric, violent imagery[18], and references Micah Johnson[19] in a tragically misguided comparison to his claims that arise out of to make the point that he seeks justice for the wrongs he claims have been heaped upon him due to his proper and necessary expulsion from a voluntary professional society.[20] Beasley's multiple references to the "hate-filled" litigation process and his claim that he is a judicial underdog with attempting to right a racial wrong score to balance suggest that oral argument would not aid in orderly resolution of this case and likely would be yet another Beasley circus. As a result, Appellees do not request oral argument.

III.
STATEMENT OF ISSUES PRESENTED

- Appellant has failed to establish that the trial court abused its discretion in granting Appellees' motion to declare Appellant vexatious.
- Appellee's motion to declare appellant vexatious was timely.
- Appellant is vexatious. There was no reasonable probability that Appellant would prevail on any of his claims against Appellees. Appellees easily established that Appellant's litigation history met Chapter 11's numerosity requirement. The trial court's Vex Order was proper in all respects.
- The Vexatious Litigant Statute is constitutional.

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[18] Citing films "Mississippi Burning" and "A Time to Kill" and an episode of "Law & Order" in his briefing at pps. 30-31, 82-83.

[19] Micah Johnson notoriously murdered five Dallas police officers and injured nine others on July 7, 2016.

[20] Appellant's Second Amd. Brief ("Brief") at pp. 23, 27, 29-31.

- Appellant's failure to pay the court ordered security mandated dismissal of his affirmative claims.

- Chapter 11 imposes a mandatory stay of trial proceedings when a vexatious litigant motion is filed. Only *after* a motion is denied or, if granted, the vexatious litigant has paid the court-ordered security, may the trial court resume proceedings.

IV.
STATEMENT OF FACTS

A. Beasley Sues SIM-DFW, Nonsuits on the Eve of Summary Judgment, and Then Sues SIM-DFW Again.

The Society for Information Management is a national, professional society of Information Technology ("IT"). SIM aims to connect senior level IT leaders with peers in their communities; to provide opportunities for collaboration to share knowledge; to provide networks; give back to local communities; and provide its members with opportunities for professional development. [21] Locally, Appellee is known as SIM-DFW and is one of the largest chapters in the organization, with more than 300 members.[22] Beasley was a member of SIM-DFW until April 2016 when he was expelled from the Chapter by vote of the Board of the Directors.[23]

1. The Original Case and Award of $211,032.02 in Attorneys' Fees to SIM-DFW.

Before expelling Beasley, the Executive Committee planned to seek his resignation.[24] However, before the Executive Committee was able to seek his resignation, Beasley sued both his own organization and the volunteers who donate their time to serve on its Board of Directors.[25]

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[21] *See* https://www.simnet.org/home, last visited Nov. 17, 2019.

[22] *See* https://chapter.simnet.org/dfw/aboutchapter/about-dfw-chapter, last visited Nov. 17, 2019.

[23] CR 671-673, and exhibits cited therein at CR

[24] September 3, 2019 RR Exhibit, Defendants' Exhibit 22, at 184:22-185:11.

[25] CR 181-213.

During the Original Case, Beasley amended his claims multiple times.[26] In the Sixth Amended Petition, Beasley added several declaratory judgment act claims alleging that (1) the April 19, 2016 expulsion meeting was void because it violated the Texas Business Organizations Code; (2) the actions taken by the SIM-DFW Board following the April 19, 2016 meeting were invalid absent Beasley's ratification; and (3) SIM-DFW was prohibited from using member funds to benefit non-members.[27] Beasley also alleged that his due process rights were violated because SIM-DFW did not provide him with due process related to his expulsion.[28]

SIM-DFW filed a motion for summary judgment arguing that the doctrine of judicial non-intervention required dismissal of all of his claims and he then nonsuited all of his claims on October 5, 2017,[29] the date his response to SIM-DFW's motion for summary judgment was due.

After the nonsuit, SIM-DFW moved for, and was declared, the prevailing party on Beasley's declaratory judgment act claims.[30] SIM-DFW was awarded $211,032.02 in attorneys' fees for the defense of the declaratory judgment act

[26] CR 36-213.

[27] CR 36-46.

[28] CR 43-44.

[29] CR 22-23, 34.

[30] CR 22-26.

claims.[31] Beasley filed multiple post-judgment motions, seeking recusal of the judge,[32] mandamus in both the Fifth Court of Appeals and the Texas Supreme Court,[33] and all manner of post-judgment relief.[34] Eventually, Beasley appealed the award of attorneys' fees.[35] The Fifth Court of Appeals affirmed the award.[36] Beasley then petitioned the Texas Supreme Court for review.

2. Beasley's 2017 Case, Appellee's Motion to Transfer Venue, and Return to Dallas County.

At the same time he was seeking review of the attorneys' fees award, on November 30, 2017, Beasley filed a nearly identical case against SIM-DFW and Appellees Janis O'Bryan and Nellson Burns in Collin County, i.e., the 2017 Case.[37] On January 16, 2018, Appellees first moved to transfer venue, arguing that Beasley was engaging in forum- shopping and that proper venue for the 2017 Case was Dallas County.[38] Thereafter, on January 22, 2018, Appellees filed their Original

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[31] CR 214-216.

[32] CR 23-26; 217-523.

[33] CR 23-26; 217-523.

[34] *Id.*

[35] CR 769-886.

[36] *Beasley v. Society of Information Management et al*., 2018 Tex.App. LEXIS 8993 (Tex.App.—Dallas Nov. 1, 2018).

[37] CR 629.

[38] CR 22-628.

Answer, General Denial, and Affirmative Defenses subject to the Motion to Transfer Venue.[39]

B. The Timely Filed Vexatious Litigant Motion Stayed The Litigation and Beasley Was Determined To Be Vexatious.

The Collin County District Court transferred the 2017 Case back to Dallas County in April 2018.[40] On April 19, 2018, when the 2017 Case was in the process of being transferred to Dallas County, Appellees filed a Motion to Declare Peter Beasley a Vexatious Litigant.[41] The Vexatious Litigant Motion was filed three (3) days before the expiration of the filing deadline contained in TEX. CIV. PRAC. & REM. CODE § 11.052(a).[42] In characteristically erroneous argument, Beasley disputes the timeliness of the filing.

By statute, the filing of the vexatious litigant motion **stayed all litigation activity**. TEX. CIV. PRAC. & REM. CODE § 11.052. Appellees' Vexatious Motion was heard on September 20, 2018.[43] Beasley was represented by counsel at this hearing.[44] Beasley's counsel even requested an opportunity to provide post-hearing briefing,

[39] October 8, 2019 Supp. CR Vol 1. at 20-23.

[40] CR 661-662.

[41] CR 663-989.

[42] CR 663-664.

[43] RR Vol. 1.

[44] RR Vol. 1 at p. 2.

which was granted.[45] However, his counsel did not request that Beasley testify in his own defense, did not demand rulings on his objections, and did not present any witnesses on behalf of Beasley.[46] Appellees' counsel provided evidence and argument establishing that Beasley had no reasonable probability of prevailing on his claims against Appellees.[47] Appellees also provided the trial court with evidence proving that Beasley's vexatious behavior more than meets the numerosity requirements of TEX. CIV. PRAC. & REM. CODE § 11.054(1)(A) and (B). Following the hearing, the Court accepted letter briefs from both parties regarding (1) the timeliness of Appellants' Vexatious Litigant Motion and (2) Beasley's Reasonable Probability of Success on the Merits.[48]

V.
SUMMARY OF ARGUMENT

Beasley, an experienced *pro se* litigant who is no stranger to the Dallas courts and the Fifth Court of Appeals, has repeatedly proven that the vexatious litigant statute absolutely applies to him. The record is replete with evidence of his vexatious behavior, including his own brief that argues an astonishing 25 appellate issues, his

[45] RR Vol 1, 11:23-12:12; 79:18-88:9.

[46] Beasley's assertion that Appellee's Janis O'Bryan and Nellson Burns were subpoenaed to testify at the vexatious litigant hearing is false. Brief at 16. O'Bryan and Nellson were subpoenaed to appear as witnesses in Beasley's Rule 12 Motion hearing, which did not take place. RR Vol 1 78:20-79:17. This clarification of the subpoenas was unchallenged by Beasley and/or his counsel.

[47] *See*, RR Vol. 1.

[48] CR 1089-1258.

trial court filings that exceed 200, the evidence and argument presented to the trial court by Appellee's counsel, his fanciful claims of a vast conspiracy between the courts, defense counsel, his own counsel, and SIM-DFW's insurer, and numerous other vexatious filings that he has made.

Moreover, the history of this appeal also establishes Beasley's vexatious behavior. Beasley's failure to timely appeal the December 11, 2018 interlocutory order resulted in repeated notices and amended notices of appeal, the filing of a second appeal, requests for clarification, and finally a consolidation of appeals by this Court to allow for a combined adjudication of the issues on appeal and to aid in the disposition of issues. Not surprisingly, Beasley has created a mess of his appeal(s) and continues to waste judicial resources.

But importantly, ***nothing*** in Beasley's brief supports reversing the trial court. As this Court is well aware, a vexatious litigant declaration is reviewed on an abuse of discretion standard. *Harris v. Rose*, 204 S.W.3d 903, 905 (Tex.App. –Dallas 2006, no pet.); *see also Forist v. Vanguard Underwriters Ins. Co.*, 141 S.W.3d 668, 670 (Tex. App. –San Antonio 2004, no pet.) (noting that while no other Texas courts has addressed the appropriate standard of review for CPRC Chapter 11 claims, "abuse of discretion" was the appropriate standard under Chapter 13 which is an analogous chapter in the Civil Practice and Remedies Code). Appellees' motion complied in *all respects* with the vexatious litigant statute. The vexatious litigant motion was

clearly timely, having been filed less than 90 days after Appellees filed their original answer. Neither Appellees' counterclaims nor their efforts to have this case timely transferred to the correct venue, prohibited them from availing themselves of the vexatious litigant statute.

All statutory requirements of TEX. CIV. PRAC. & REM. CODE § 11.054 are met. The trial court found that Beasley had no reasonable probability of prevailing on his claims. The core claims all were defeated by the doctrine of judicial non-intervention. The remaining claims all suffered from fatal flaws including lack of contract (or unilateral contract) for the breach of contract-based claims, judicial immunity for the defamation claims, and/or evidence that the claims as pled did not belong to Beasley at all but were instead claims that, if they were meritorious at all, belonged to Beasley's company, not Beasley himself. But, of course, those claims were not meritorious, which was clearly understood by the trial court.

The remainder of Beasley's arguments on appeal do not even merit a response, but Appellees most decidedly did **not** nonsuit their vexatious litigant motion by nonsuiting their counterclaims. That assertion is preposterous and exactly the type of argument that Beasley has made frequently and repeatedly in this almost four-year litigation. Additionally, Beasley continues to urge a vast conspiracy between judges and lawyers in Dallas County as the reason for why his multiple post-vex motions were not heard. But this too is wrong. The automatic stay, and Beasley's failure to

pay the ordered security, prevented Beasley from having any of his post-vex motions heard. While Beasley may, and certainly does, object to the outcome, as this Court has already held, "[b]ecause appellant failed to post the bond, the stay remains in place" and no hearings on Beasley's post-vex motions were necessary or proper.[49]

In sum, this appeal represents a virtual "greatest hits" of the types of arguments Beasley has lodged over the years in his vexatious crusade against SIM-DFW and the individual Appellees Janis O'Bryan and Nellson Burns. His statutory interpretation is wholly unsupported by case law and prior rulings in the trial court and from this Court. His reimagining of facts, even those established by clear records and evidence, is unparalleled nonsense. And his waste of resources of his opponents is the perfect example of why Texas adopted the vexatious litigant statute and allows defendants to seek the vexatious litigant declaration. There is no basis to reverse the trial court's determination that Beasley is a vexatious litigant. This Court must affirm.

VI.
ARGUMENT & AUTHORITIES

> Some litigants abuse the Texas court system by systematically filing lawsuits with little or no merit. This practice clogs the courts with repetitious or groundless cases, delays the hearing of legitimate disputes, wastes taxpayer dollars, and requires defendants to spend money on legal fees to defend against groundless lawsuits.

[49] Sept. 11, 2019 Order Denying Appellant's Request for Temporary Orders.

House Committee on Civil Practices, Bill Analysis, Tex. H.B. 3087, 75th Leg., R.S. (1997).

Peter Beasley is the epitome of a vexatious litigant. The trial court easily recognized this fact and this Court should affirm the trial court's orders finding Beasley vexatious, placing him on the Office of Court Administration's prefiling list, and dismissing all his claims with prejudice following his failure to pay the ordered security.

A. Appellees' Vexatious Litigant Motion was Timely Filed.

TEXAS CIVIL PRACTICE & REMEDIES CODE § 11.051 provides:

> In a litigation in this state, the defendant may, on or before the 90th day after the date the defendant **files the original answer or makes a special appearance**, move the court for an order: (1) determining that the plaintiff is a vexatious litigant; and (2) requiring the plaintiff to furnish security.

(Emphasis added).[50]

Appellees filed the Motion to Transfer Venue on January 16, 2018[51] and, on January 22, 2018, filed an Original Answer, General Denial, and Affirmative Defenses subject to the venue motion.[52] The Motion to Declare Peter Beasley a Vexatious litigant was filed **87 days** after the Answer, on April 19, 2018, in Collin

[50] Appx. 2.

[51] CR at 22-628.

[52] October 8, 2019 Supp. CR. Vol. 1 at 20-23.

County due to the pending transfer of the case from Collin County to Dallas County.[53] The deadline was met with **three** days to spare.

Beasley erroneously argues that TEX. R. CIV. P. 85 — which speaks only to the ***contents*** of original answers — provides that a venue motion is an "answer" within the meaning of TEX. CIV. PRAC. & REM. CODE § 11.051. Once again, Beasley is wrong. The plain language of Rule 85 states only that "[t]he original answer ***may consist of*** motions to transfer venue, pleas to the jurisdiction, in abatement, or any other dilatory pleas; of special exceptions, of general denial, and any defense by way of avoidance or estoppel, and it may present a cross-action…." (Emphasis added). The Rule says nothing that even possibly could be construed as declaring that a motion to transfer venue is the same thing as an original answer for purposes of the vexatious statute. While a venue motion may be part of an answer, it is not tantamount to an answer for purposes of starting the 90-day period running in which to file a vexatious motion.

Moreover, Rule 86(1) governing motions to transfer venue, includes a "due order of pleading" requirement that states explicitly that a motion to transfer venue is waived unless it is filed "**prior to or concurrently with** any other plea, pleading or motion ***except*** a special appearance motion provided for in Rule 120a." (Emphasis added). A plain reading of Rule 86 confirms that a motion to transfer venue must be

[53] CR 10.

filed before or with an answer, **not that filing a motion to transfer venue *is* an answer**.

Beasley argues that under TEX. R. CIV. P. 71 this Court should read Appellees' Motion to Transfer Venue as an answer for purposes of calculating the vexatious litigant motion filing deadline because "justice so requires."[54] Appellees prayer was that he "take nothing by way of his claims, that Defendants recover their attorneys' fees, costs and expenses as allowed by law, that this cause be transferred…and for such other and further general relief, at law of in equity, as the ends of justice require." Beasley argues Appellees added a counter-claim and an "avoidance" magically transforming the venue motion into an answer. This is sheer nonsense.

Not surprisingly, Beasley's argument is thinly supported with case law that merely restates the Black-letter law that misnomer of pleading does not render a pleading ineffective. *See e.g., Johnson v. State Farm Lloyds*, 204 S.W.3d 897, 899 n.1 (Tex. App. –Dallas 2006, pet. granted). Unlike the trial court in *Johnson* which naturally held that a motion titled "Motion to Compel Appraisal" that sought summary disposition of claims was a motion for summary judgment,[55] Beasley here argues that this Court should convert a pleading where there is no misnomer simply to render Appellees' vex motion late. Appellees requested a venue transfer and

[54] Brief at 44.

[55] 204 S.W.3d at 899 n.1.

appropriately titled their motion a Motion to Transfer Venue. Six days later, Appellees' filed their Original Answer subject to the venue motion. Both pleadings were appropriately titled by Appellees. *Johnson*, and cases like it, are unpersuasive here.

The vexatious litigant statute's language is exceedingly precise in establishing the deadline for filing a vexatious litigant motion. A defendant must file its motion before the 90th after the date the original answer or special appearance is filed. TEX. CIV. PRAC. & REM. CODE § 11.051.[56] A motion to transfer venue does not start the time clock. Beasley's attorneys' advanced this same argument in the trial court and lost.[57] The court rejected his tortured reading of Rule 85, the inapposite case law relied on by Beasley and his counsel, and properly determined that the Motion was timely filed. This Court should do likewise.

B. Appellees' Right to Invoke the Vexatious Litigant Statute is Not Altered by the Transfer of the 2017 Case from Collin to Dallas County or Appellees' Counterclaims.

One of Beasley's more unusually frivolous arguments is that by moving to transfer the 2017 Case from Collin County to Dallas County, Appellees became "plaintiffs" within the meaning of Chapter 11 and therefore were ineligible to seek

[56] Appx. 2.

[57] RR Vol. 1 13:24-23:24; *see also* CR 1226-1258; October 8, 2019 Supp. CR Vol. 1 24-32.

a declaration that Beasley was vexatious.[58] Beasley makes the same nonsensical argument with regard to Appellees status in the trial court as counter-claimants. Not surprisingly, there is no authority whatsoever for this position.

The statute defines "defendant" as "a person or governmental entity against whom a plaintiff commences or maintains or seeks to commence or maintain a litigation." TEX. CIV. PRAC. & REM. CODE § 11.001(1).[59] A "plaintiff" on the other hand is an individual who "commences **or** maintains a litigation pro se." TEX. CIV. PRAC. & REM. CODE § 11.001(5).[60] (Emphasis added). Beasley acknowledges in his Statement of the Case that he **commenced** an action against Appellees consisting of "Breach of Contract, Fraudulent Inducement, Defamation, Tortuous (sic) Interference, Declaratory Judgment, Due Process, and Injunctive causes of action."[61] Moreover, contrary to his argument, Beasley's opposition to the venue motion,[62] which he claims is evidence of his "doing nothing" to cause the case to be filed in Dallas County does not help him here. Instead, it demonstrates that given the choice,

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[58] Brief at 37.

[59] Appx. 1.

[60] *Id.*

[61] Brief at 1; *see also* CR 629-648.

[62] Beasley not only filed briefing in opposition to Appellees' Motion to Transfer Venue, he also filed two mandamuses seeking reversal of Judge Roach's Order transferring his claims to Dallas County. *See In re: Peter Beasley,* No. 05-18-00382-CV, filed April 5, 2018 and denied on April 19, 2018 and *In re: Peter Beasley II,* No. 05-18-00395-CV, filed April 8, 2018 and denied on April 24, 2018.

Beasley both would have commenced **and** maintained the litigation against Appellees in Collin County, as opposed to Dallas County where he is convinced the judiciary conspires against him.

Ultimately, as this Court well knows, whether this case was commenced in Collin, but maintained in Dallas County, or commenced and maintained in either of Collin or Dallas Counties, the record reveals that Beasley, not Appellees, filed this litigation as "Plaintiff" after having pursued Appellees for the two years prior, as Plaintiff in the Original Case. Appellees are "defendants" and Beasley is a "Plaintiff" within the meaning of Chapter 11.

Additionally, buried in the record and the rhetoric of Beasley's argument is the concession that Beasley caused much of the chaos resulting in the timing of venue transfer in the first place. Beasley's initial filing in Collin County was based on the unsupported belief that he could manufacture a principle place of business by relying on the fact that SIM-DFW's registered agent lived in Collin County.[63] Rather than concede the inappropriate venue, Beasley doubled-down, filing the first of half a dozen motions seeking to disqualify defense counsel.[64] Thus, in the midst of chaos that Beasley created by filing the 2017 Case in Collin County, Appellees did what

[63] CR 31.

[64] October 28, 2019 Supp. CR Vol 3. 8.

was necessary to expedite the transfer of the 2017 Case to allow them to timely file the vexatious litigant motion.

The hearing on Defendants' Motion to Transfer Venue was held on April 3, 2018 and granted the same day.[65] When the venue motion was granted, Beasley then chose to ignore the requests from the Collin County District Clerk to run out the clock on Appellees.[66] Appellees had to file a Motion requesting the entry of an amended order[67] and the Collin County court then signed an Amended Order on the Motion to Transfer Venue on April 18, 2018 which expedited the transfer to Dallas County.[68] On receipt of that Amended Order, and confirmation that the transfer was imminent, Defendants filed the Motion to Declare Peter Beasley a Vexatious Litigant (in both Collin and Dallas County out of an abundance of caution) and paid the transfer fees associated to ensure that the vexatious litigant motion was timely filed.[69] While perhaps unconventional, time was of the essence, and Beasley's attempt to run out the clock on Appellees ability to file a vexatious litigant motion had to be defeated. After what was then two long years of litigating with Beasley, traversing state and federal courts in Dallas and Collin Counties,

[65] CR 661.

[66] October 8, 2019 Supp. CR 54-55.

[67] *Id.* at 55.

[68] CR 662.

[69] CR 1354-1355.

Appellees were ready to, and were entitled to, avail themselves of the protections offered by Chapter 11.

Beasley's argument that Appellees' payment of the transfer fees converted Appellees from defendants in Collin County to plaintiffs in Dallas County is wholly unsupported by law. Beasley cites to no authority and the trial court heard this same argument and rejected it out of hand noting that the payment of the transfer fee is administrative in nature and it not determinative of party status.[70] Similarly, this Court should find Beasley's argument on this point unpersuasive and affirm.

C. The Trial Court's Order Declaring Beasley Vexatious is Proper in All Respects.

Beasley complains that the Court's December 11, 2018 order fails to state the specific findings of the trial court in declaring Beasley vexatious. Beasley claims that this failure renders the Vex Order "insufficient." There is no required form of order for an order declaring a *pro se* party to be vexatious.

Simply put, the trial court may find that the statutory elements of Chapter 11 are met, as the trial court did here[71] and that is sufficient. When a trial court's order does not recite any findings, or specifies the basis for its decision, the Court of Appeals will affirm the order if it is correct on any legal theory supported by the record. *Jones v. Markel*, 2015 Tex. App. LEXIS 6273, *11 (Tex. App. –Houston

[70] RR Vol. 1 85:8-86:7.

[71] CR 1259.

[14th Dist.], June 23, 2015, pet. denied) (mem. op.) (holding that where the trial court declared a party vexatious but the order did not recite any findings, the court of appeals will imply findings that the statutory requirements have been met and will review those findings for legal and factual sufficiency). In contrast to the clear case law regarding a trial court's ability to exercise its discretion in declaring litigants vexatious, Beasley provides this Court with no authority whatsoever that holds that a trial court is required to exhaustively restate, either on the record or in the order, the grounds for granting a vexatious litigant motion.

Moreover, Beasley's argument that he was entitled to findings of fact and conclusions of law also is incorrect. In fact, TEX. R. CIV. P. 296 only requires the trial court to issue findings of fact and conclusions of law after a bench trial. Requiring the trial court to issue findings of fact and conclusions of law after every hearing, as requested by Beasley, would unnecessarily burden the courts — a request that, tragically, is par for the course for this particular vexatious litigant.

What Beasley must show, which he cannot, is that the trial court was presented with insufficient evidence to meet the statutory requirements of Chapter 11. As was demonstrated during the hearing on September 20, 2018, and in the post-hearing briefing allowed by the trial court, Appellees provided this Court with exhaustive evidence of Beasley's vexatious litigant behavior, including:

- Evidence of **seven** (two more than the requisite five) litigations commenced in the 7 years immediately preceding the filing of

Appellee's motion that were either determined adversely to Beasley, TEX. CIV. PRAC. & REM. CODE § 11.054(1)(A) or "permitted to remain pending at least two years without having been brought to trial or hearing", TEX. CIV. PRAC. & REM. CODE § 11.054(1)(B);

- Evidence of two additional litigations commenced in the 7 years immediately preceding the filing of Appellee's motion that were determined adversely to Beasley after Appellee's motion was filed but that may still be counted by this Court for numerosity purposes;

- Evidence and legal argument confirming the frivolous and unmeritorious nature of all of Beasley's pending claims sufficient to support the trial court's finding that Plaintiff had no reasonable probability of success of prevailing; and,

- Argument and legal authority confirming that Appellees' motion to declare Beasley vexatious was timely filed.

The Order declaring Beasley vexatious is not void.

1. The Vexatious Litigant Statute's Numerosity Requirement is Easily Established by the Record Evidence.

This Court is well familiar with the requirements of Chapter 11. The movant to prove that the plaintiff had, in the seven-year (7) period immediately preceding the date the movant makes the motion, commenced, prosecuted or maintained **at least five litigations** as a *pro se* litigant other than in small claims court that have been (A) finally adversely determined to the plaintiff, **or** (B) permitted to remain

pending at least two years without having been brought to trial or hearing. TEX. CIV. PRAC. & REM. CODE §11.054(1)(A) and (B).[72]

(a) The Trial Court Had Evidence of at Least Seven Litigations for Numerosity Purposes.

At the September 20, 2018 hearing Appellees introduced into evidence the **six (6) litigations** commenced, prosecuted or maintained by Plaintiff Beasley that had been finally adversely determined against him:

1. ***Peter Beasley v. Susan M. Coleman; Randall C. Romei,*** Case No. 1:13cv1718 in the USDC Northern District of Illinois;[73]
2. ***Peter Beasley v. John Krafcisin, John Bransfield, Anna-Maria Downs, and Hanover Insurance Co.*****,** Case No. 3:13-CV-4972-M-BF, USDC Northern District of Texas;[74]
3. ***Peter Beasley v. Seabrum Richardson and Lamont Aldridge***, No. 05-15001156-CV, Texas Fifth Court of Appeals;[75]
4. ***In re: Peter Beasley***, Cause No. 05-15-00276, Texas Fifth Court of Appeals;[76]
5. ***In re: Peter Beasley*****,** Cause No. 05-17-01365-CV, Texas Fifth Court of Appeals;[77]

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[72] Appx. 3; Also, § 11.054(1)(C) provides an additional grounds for determining a plaintiff is vexatious. It is not necessarily an issue here, though at least one court confirmed that Beasley's claims were frivolous. September 3, 2019 RR Exhibits, Defendants' Exhibit 1 and p.2.

[73] September 3, 2019 RR Exhibits, Defendants' Exhibit 1.

[74] *Id.*, Defendants' Exhibit 2.

[75] *Id.*, Defendants' Exhibit 3.

[76] *Id.*, Defendants' Exhibit 4.

[77] *Id*., Defendants' Exhibit 5.

6. ***In re: Peter Beasley***, Cause No. 05-17-1032, Texas Supreme Court.[78]

Appellees also argued that a ***seventh case***, *Peter Beasley v. Society for Information Management*, Cause No. DC-16-03141 in the 162nd Judicial District Court of Dallas County, met the requirements of § 11.051(B), not § 11.051(A).[79] This case should also be counted for numerosity purposes.[80] Beasley argues that this case does not count because (1) it is still on appeal and (2) he was represented when the case was dismissed at the trial court level. He is wrong once more.

First, § 11.051(B) is a different means of determining whether a case counts for numerosity purposes and does not require a final adverse determination, only that the case has not come to trial or hearing within two years. Second, the statute clearly contemplates that a *pro se* party may eventually become represented or be represented and lose counsel by using the "commenced, prosecuted or maintained" language to describe the litigation at issue for the numerosity requirement. *See, Drake v. Andrews,* 294 S.W.3d 370, 374-75 (Tex. App. –Dallas 2009, no pet.) (holding that the vexatious litigant statute is not limited to just pro se litigants, "[t]o interpret the statute in such a way as to immunize Drake from its effect, simply because Drake was briefly represented by counsel, would be to thwart the statute's

[78] *Id.*, Defendants' Exhibit 6.

[79] Appx. 3.

[80] RR Vol. 1 33:18-35:15.

purpose."). Beasley cannot credibly dispute that he commenced, prosecuted, and maintained this seventh litigation as a *pro se.*

Beasley also *commenced* two other litigations during the seven years preceding the date Appellees made their motion that this Court can include in the count for numerosity purposes.[81]

8. ***In re: Peter Beasley***, Cause No. 05-18-00382-CV, Texas Fifth Court of Appeals, filed on April 5, 2018. Denied on April 19, 2018 on grounds that the order complained of was statutorily beyond the appellate court's right to review.[82]

9. ***In re: Peter Beasley II,*** No. 05-18-00395-CV, Texas Fifth Court of Appeals, filed on April 8, 2018. Denied on April 24, 2018 on grounds that relator failed to show a right to relief.[83]

Beasley argues that neither of these two cases count because they were determined adversely to him *after* Appellees filed their vex motion, however, in *Dolenz v. Bundy* this Court determined that two causes of action filed by Dolenz more than seven years prior to the vexatious litigant motion at issue in that appeal counted for purposes of numerosity because they were "maintained" within the seven year period. 2009 Tex. App. LEXIS 9196, *6 (Tex. App. –Dallas, December 2, 2009, no pet. h.). Similarly, Beasley "commenced, maintained, and prosecuted" the two

[81] Appellees did not focus on either of these two litigations in the trial court, though they were part of the evidence submitted to the trial court. Appellees reference them now because Beasley has raised their inadmissibility for numerosity purposes as part of his brief. Brief at 55.

[82] September 3, 2019 RR Exhibits, Defendants' Exhibit 8.

[83] September 3, 2019 RR Exhibits, Defendants' Exhibit 9.

mandamuses above during the statutory seven-year period and both were determined against him. That the adverse determination occurred after Appellees' filing does not mean they do not count for numerosity purposes.

(b) The Court Records Establishing Numerosity Were Properly Admitted Into Evidence.

On appeal, Beasley challenges the admissibility of the court records provided by the Appellees in the trial court claiming that the unsworn, non-certified records should not have been admitted as evidence by the trial court.[84] His counsel's objection at the hearing that he had not seen the court records before and that the records were not authenticated,[85] was overruled by the trial court.[86] Neither at the hearing nor in the post-hearing briefing did Beasley or his counsel object to the accuracy of *any* of the evidence provided to the Court that proved the six litigations determined adversely against Beasley.[87]

Later, in Beasley's Motion to Reconsider,[88] his new counsel argued that six of the litigations should not count for numerosity purposes, but again failed to argue that the record evidence was inadmissible or unreliable in any way.[89] Moreover, in

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[84] Brief at 50.

[85] *Id.*

[86] *Id.* 58:1-2.

[87] RR Vol. 1 56:12-58:2.

[88] CR 1265-1268.

[89] Of the six litigations mentioned in the Motion to Reconsider, Appellees only relied on 4, though *In re Peter Beasley II*, Cause No. 05-18-00395-CV is addressed above.

both his Motion for New Trial [90] and First Amended Motion for New Trial[91] Beasley failed to raise any objection whatsoever to the admissibility of Appellees' numerosity evidence. Raising it for the first time on appeal is ineffectual.

Next, Beasley's reliance on TEXAS RULE OF EVIDENCE 202(b)(2) to support his argument is misplaced. Rule 202 (b)(2) addresses the admissibility of the law of other states, including court decisions, but does not dictate the manner in which those court decisions are presented to the trial court in any way. Instead, as the rule states, a court may take judicial notice of another state, territory, or federal jurisdiction's court decisions if a party requests it and the court is supplied with "the necessary information." TEX. R. EVID. 202(b)(2). Beasley argues that "the necessary information" somehow means that the other court's order must be certified or attested to under oath,[92] but the rule does not include this requirement and a court is given wide latitude to determine the accuracy of the information it is being presented. *See* TEX. R. EVID. 201(b); *see also Freedom Comms. v. Coronado*, 372 S.W.3d 621, 623 (Tex. 2012) (holding that when presented with a plea agreement that was relevant to the issues in dispute, an appellate court may take judicial notice of a relevant fact that is either general known within the territorial jurisdiction of the

[90] Aug. 30, 2019 Supp. CR Vol. 1 135-171.

[91] *Id.* at 179-306.

[92] Brief at 51.

trial court or capable of accurate and ready determination by resort to sources who accuracy cannot reasonably be questioned). The accuracy of the court records provided to the trial court cannot reasonably be questioned — in fact, they were not questioned by any of Beasley's counsel or even by Beasley himself. Instead, Beasley argues that the cases the court records reflect do not count for numerosity purposes without ever challenging the accuracy of the records themselves.

Beasley's citation to *Southern Cnt'y Mut. Ins. v. Ochoa* has some relevance, though in fact *Ochoa* supports Appellees. 19 S.W.3d 452 (Tex.App. –Corpus Christi 2000, no pet). *Ochoa* stands for the unremarkable proposition that a court cannot take a lawyer's word about the existence of orders from another court; rather, the party seeking judicial notice of the orders of another court need provide the trial court with proof of the orders. *Id.* at 463. The appellate court in *Ochoa* went on to note that the party urging judicial notice of another court's order failed to direct the court of appeals to a copy of the order in the appellate record and failed to describe the orders in any detail at the hearing. *Id.*

Here, in stark contrast, the Appellees supplied the Court with copies of all of the orders finally adjudicating Beasley's prior litigations, described each in great detail on the record[93] and, the orders themselves were admitted as evidence by the

[93] RR Vol 1, 28:16-36:12.

trial court as self-authenticating documents under TEX. R. EVID. 902(5). *See Williams Farms Produce Sales, Inc. v. R&G Produce Co.*, 443 S.W.3d 250, 259 (Tex.App. –Corpus Christi 2014, no pet. h.) (holding that documents from government websites are self-authenticating under TEX. R. EVID. 902(5), and further, that documents that originate from document websites can also be authenticated under TEX. R. EVID. 901(b)(4)).

Last, Beasley's reliance on *Gardner v. Martin*, 354 S.W.2d 274 (Tex.1961), and *Soefje v. Jones*, 270 S.W.3d 617 (Tex.App. –San Antonio 2008, no pet.) is misplaced and easily rebutted. The court in *Gardner* merely held that a party moving for traditional summary judgment and relying on records of a prior case to establish *res judicata* must provide those records of the prior case to the trial court and could not incorporate court records by reference. 354 S.W.2d at 276. In *Soefje*, the court did not exclusively hold, as Beasley claims, that only certified or sworn documents from other cases are admissible. Instead, the *Soefje* court noted the general rule that a trial court may not take judicial notice of documents from another case unless they are properly authenticated. 270 S.W.3d 617, 625 ("It is also generally true that pleadings are not summary judgment evidence and that simply attaching a document to a pleading does not make the document admissible as evidence or dispense with proper foundational requirements."). Here, as

demonstrated in the record, the court orders of Beasley's prior cases all were authenticated.

The records submitted to the trial court of Beasley's prior litigations were authentic and accurately represented Beasley's notorious *pro se* history. Thus, their admission into evidence was proper.

2. Six of the Seven Adjudications Accepted by the Trial Court as Evidence of Beasley's Vexatious Nature were Determined Adversely, and the Seventh Counts for Numerosity Purposes Under a Different Part of the Statute.

Beasley continues to argue that Appellees' evidence failed to prove the clear adverse determinations that are visible on the very face of each document.

Inexplicably, he argues that *Peter Beasley v. Susan M. Coleman; Randall C. Romei,* Case No. 1:13cv1718 in the USDC Northern District of Illinois [94] and *Peter Beasley v. John Krafcisin, John Bransfield, Anna-Maria Downs, and Hanover Insurance Co.,* Case No. 3:13-CV-4972-M-BF, USDC Northern District of Texas[95] should not count for purposes of TEX. CIV. PRAC. & REM. CODE § 11.054 (1)(A) because, while the cases brought *pro se* by Peter Beasley were dismissed, they were dismissed on jurisdictional grounds.[96] Beasley's argument is that a dismissal for

[94] September 3, 2019 RR Exhibits, Defendants' Exhibit 1

[95] September 3, 2019 RR Exhibits, Defendants' Exhibit 2

[96] Brief at p.36.

improper venue or lack of jurisdiction does not meet the statute's requirement that a litigation be "finally determined adversely."

Beasley misstates the facts. As demonstrated by the records contained in Defendants' Exhibit 1, Defendant Romei's Motion to Dismiss was granted because the Court did not believe supplemental jurisdiction existed but Peter Beasley's claim against Defendant Susan Coleman was dismissed on the grounds that it was filed frivolously, which is one of the specific numerosity grounds under TEX. CIV. PRAC. & REM. CODE § 11.054(1)(C).

Beyond Beasley's misrepresentation of the Illinois case, he cites no law for the proposition that "adverse determinations" means only merits-based adjudications. He provides the Court with no guidance from either legislative history or analogous statutes to argue that dismissals for improper venue and lack of jurisdiction do not count for purposes of the vexatious litigant statute. Thankfully, this Court need not rely on Beasley's argument to decide this point. The Third Court of Appeals affirmed in *Leonard v. Abbott* that Erik Leonard was a vexatious litigant in part based on ***five litigations*** Leonard commenced, prosecuted or maintained *pro se* that were dismissed on jurisdictional grounds and finally determined adverse to him. 171 S.W.3d 451, 460 (Tex.App. –Austin 2005, pet. denied).

Moreover, even without *Leonard's* persuasive authority, this Court need only consider the *purpose* of the vexatious litigant statute to know that Beasley's

argument that jurisdictional dismissals do not count is utter nonsense. In *Cooper v. McNulty*, the Dallas Court of Appeals stated "Chapter 11 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE addresses vexatious litigants — persons who abuse the legal system by filing numerous, frivolous lawsuits." 2016 Tex.App. LEXIS 11333, *6 (Tex.App. –Dallas, October 19, 2016, r'hrg. denied, r'hrg. en banc denied). The Court went further, clarifying that the statute is meant to "strike a balance between Texans' right of access to their courts and the public interest in protecting defendants form those who abuse the Texas court system by systematically filing lawsuits with little or no merit." *Id.* at *11. **The clear intent of the statute is to operate as a check and balance on *pro se* litigants who would file frivolous, meritless, or simply improper claims that waste judicial resources.** Given that backdrop, it is inconceivable that the statute would find that lawsuits filed in improper venues or in forums that lack jurisdiction are not a significant waste of judicial resources.

As both Defendants' Exhibits 1 and 2 show, significant judicial resources were expended in both cases. In the *Coleman* matter, (Defendants' Exhibit 1), a hearing on Defendant Romei's Motion to Dismiss was held and then after the Motion to Dismiss was granted (and the claims against Coleman were dismissed because they were frivolous), Peter Beasley then ***appealed that decision to the United States Seventh Circuit Court of Appeals*!** The appeal was decided in

February 2014, but, at or around the same time Beasley presumably was briefing his Seventh Circuit appeal, he filed a case involving the same facts and circumstances in the United States District Court for the Northern District of Texas — the *Krafcisin* case (Defendants' Exhibit 2).

The *Krafcisin* defendants filed motions to dismiss under FED. R. CIV. P. 12 (b)(1), (2), (3), and (6) in early January 2014 and Magistrate Judge Stickney provided his Findings, Conclusions, and Recommendations for dismissal on August 25, 2014. (Defendants' Exhibit 2). Beasley next filed **objections** to the Magistrate's Findings, Conclusions, and Recommendations and then filed amended objections. Further amendments to the objections were prevented by Judge Lynn's September 17, 2014 Order accepting the Magistrate Judge's findings.[97] Not surprisingly, the docket indicates that Beasley attempted to appeal to the Fifth Circuit Court of Appeals.[98]

It is absurd to suggest, as Beasley does, that this colossal waste of judicial resources that involved two United States District Courts and one United States Court of Appeals would not count for purposes of § 11.054(1)(A). Both cases clearly count and Beasley's objections are without merit.

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[97] This Court may take judicial notice of the docket sheet of the Federal Court case in *Beasley v. Krafcisin et al.,* Cause No. 3:13-cv-04972-M-BF.

[98] *Id.*

Next, Beasley argues that *Peter Beasley v. Seabrum Richardson and Lamont Aldridge*, No. 05-15001156-CV, (5th Court of Appeals) should not count because it was a voluntary nonsuit. Here, he again misstates the facts. It was a dismissal with prejudice that was entered at the request of Beasley that was then appealed ***by Beasley*** and affirmed by the Fifth Court of Appeals.[99]

Beasley similarly complains that *Peter Beasley v. Society for Information Management*,[100] i.e., the Original Case, should not count against him because he voluntarily nonsuited this case as well. But as argued in the trial court, Appellees presented this case to the court because Beasley's failure to bring this case to trial within two years is the reason that this one counts under TEX. CIV. PRAC. & REM. CODE § 11.051(B).[101]

Finally, Beasley complains that the remainder of the cases presented to the trial court do not count as adverse determinations because they were original proceedings "filed within the context of an ongoing lawsuit" and to count them would result in "double-counting".[102] This argument is absurd on its face. Mandamus is a petition for extraordinary relief seeking to have a higher court command a lower

[99] September 3, 2019 RR Exhibits, Defendants' Exhibit 3.

[100] September 3, 2019 RR Exhibits, Defendants' Exhibit 5.

[101] Appx. 3.

[102] Brief at 53.

court to do or refrain from doing some act. *See Seagraves v. Green*, 288 S.W. 417, 424-25 (Tex.1926).

In order for mandamus to issue, the relator must show there is no adequate remedy by appeal. *In re Prudential*, 148 S.W.3d 124, 135-36 (Tex.2004). To suggest, as Beasley does, that his mandamuses did not count because they related to merits of underlying litigation ignores that mandamuses create an additional burden on the judicial system but also misstates and mischaracterizes the nature of the mandamuses at issue.

In re: Peter Beasley, Cause No. 05-15-00276[103] involved an issue related to deemed admissions. While that issue might relate to the merits of an underlying litigation, it did not here. The mandamus was filed and decided on March 19, 2015, three months *before* the final judgment at trial and second, the judgment at trial came about when Beasley voluntarily dismissed his case with prejudice on June 12, 2015 resulting in a final judgment that was later affirmed by this Court, when he appealed his own dismissal with prejudice in *Peter Beasley v. Seabrum Richardson and Lamont Aldridge*, No. 05-15001156-CV!

[103] September 3, 2019 RR Exhibits, Defendants' Exhibit 4.

In the two mandamuses taken from the Original Case, *In re Peter Beasley,* Cause No. 05-17-01365[104] and 05-17-1032[105], Beasley sought mandamus to have the Fifth Court of Appeals and the Texas Supreme Court reverse the November 3, 2017 award of attorneys' fees and the November 22, 2017 order denying Plaintiff's motion to disqualify and recuse the trial judge on the grounds that the judge, Judge Maricela Moore was disqualified. Both mandamuses were denied and Beasley continues to pursue reversal of the attorney's fees award by appeal currently pending in the Texas Supreme Court. In both instances, his mandamus represent the very type of waste of judicial resources that the vexatious litigant statute is designed to prevent.

"Litigation" is defined by the vexatious litigant statue as "a civil action commenced, maintained, or pending in any state or federal court." TEX. CIV. PRAC. & REM. CODE § 11.001(2) (emphasis added).[106] The unambiguous language of the statute plainly encompasses appeals. *Cooper v. McNulty*, 2016 Tex.App. LEXIS 11333, * 10 (Tex.App. –Dallas, October 19, 2016, r'hrg. denied, r'hrg. en banc denied) (holding that an original proceeding for writ of mandamus is a civil action within the meaning of the vexatious litigant statute). Beasley's argument that

[104] September 3, 2019 RR Exhibits, Defendants' Exhibit 6.

[105] September 3, 2019 RR Exhibits, Defendants' Exhibit 7.

[106] Appx. 1.

mandamuses do not count for purposes of the vexatious litigant statute is inconsistent with the very language of the statute and the clear holdings under the relevant case law.[107]

Last but not least, Beasley's 2016 lawsuit against SIM-DFW, a.k.a. the Original Case counts for purposes of the vexatious litigant numerosity requirement under TEX. CIV. PRAC. & REM. CODE § 11.054(1)(B).[108] It is undisputed that the claims filed by Beasley in March 2016 were not brought to trial or hearing before March 2018. Under § 11.054(1)(B), a claim commenced, prosecuted, or maintained by a *pro se* plaintiff that has not been brought to trial or hearing counts for purposes of the numerosity requirement.

3. Beasley Argues For the First Time On Appeal That He Was Not a *Pro Se* Litigant.

In rather surprising disregard for the judicial process, Beasley argues, for the first time on appeal and some 19 months after Appellees first filed the Motion to Declare Beasley Vexatious, that there is "no evidence" that he commenced, prosecuted, or maintained some of these litigations *pro se*.

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[107] Beasley's citation to *Goad v. Zuehl*, 2012 Tex.App. LEXIS 4066 (Tex.App.—San Antonio, May 23, 2012, no pet. h) is unpersuasive. In *Goad,* the court merely noted that an appeal cannot be counted separate from the underlying case for numerosity purposes. In *In re Florance*, 377 S.W.3d 837, 839 (Tex.App.—Dallas 2012, no pet. h.) the Dallas Court of Appeals clarified that the trial court lacks jurisdiction to hear and grant a post-judgment motion to declare a litigant vexatious.

[108] Appx. 3.

1. ***Peter Beasley v. Susan M. Coleman; Randall C. Romei,*** Case No. 1:13cv1718 in the USDC Northern District of Illinois. The Seventh Circuit Order dismissing Beasley's appeal states in relevant part: "Peter Beasley, the former representative of an estate in ongoing probate proceeding, filed a civil-rights action on his own behalf against the Cook County Judge and his previous attorney."[109]

2. ***Peter Beasley v. John Krafcisin, John Bransfield, Anna-Maria Downs, and Hanover Insurance Co.*,** Case No. 3:13-CV-4972-M-BF, USDC Northern District of Texas. The Findings, Conclusions, and Recommendation of the United States Magistrate Judge for the United States District Court of the Northern District of Texas, Dallas Division state in relevant part: "The District Court referred this *pro se* civil action to the U.S. Magistrate Judge for pretrial management."[110]

3. ***Peter Beasley v. Seabrum Richardson and Lamont Aldridge***, No. 05-15001156-CV, Trial Court Cause No. DC-13-13433, Texas Fifth Court of Appeals. The Memorandum Opinion from Justices Lang, Myers, and Evans states in relevant part: "Although we construe pro se pleadings and brief liberaly, we hold pro se litigants to the same standards as licensed attorneys and require them to comply with the applicable laws and rules of procedure."[111]

4. ***In re: Peter Beasley***, Cause No. 05-15-00276, Texas Fifth Court of Appeals.[112] This mandamus relates to the above-referenced case, *Beasley v. Richardson*. This Court may take judicial notice of the filings in this mandamus and note the fact that Beasley pursued the mandamus pro se.

5. ***In re: Peter Beasley*,** Cause No. 05-17-01365-CV, Texas Fifth Court of Appeals.[113] This Court may take judicial notice of the filings in this mandamus and note the fact that Beasley pursued the mandamus pro se.

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[109] September 3, 2019 RR Exhibits, Defendants' Exhibit 1.

[110] *Id.*, Defendants' Exhibit 2.

[111] *Id.*, Defendants' Exhibit 3.

[112] *Id.*, Defendants' Exhibit 4.

[113] *Id*., Defendants' Exhibit 5.

Beasley concedes that he was pro se at various times during the pendency of the Original Case to which this mandamus relates.

6. ***In re: Peter Beasley***, Cause No. 05-17-1032, Texas Supreme Court.[114] This Court may take judicial notice of the filings in this mandamus and note the fact that Beasley pursued the mandamus pro se. Beasley concedes that he was pro se at various times during the pendency of the Original Case to which this mandamus relates.

Beasley clearly is a vexatious litigant. The record evidence establishes that in each of the litigations presented in the Motion, Beasley commenced, prosecuted, and/or maintained the litigations *pro se*.

4. Beasley Had No Reasonable Probability of Prevailing on His Claims Against Appellees in the Trial Court.

The crux of his claims against Appellees relate to his expulsion from the membership of SIM-DFW in April 2016. He complained in the 2017 Case, as he did in the Original Case, that his removal from SIM-DFW was done without due process and in contravention of the Bylaws of the chapter. However, all of his claims that relate to his expulsion were subject to application of the well-established doctrine of judicial nonintervention.[115]

The trial court received extensive briefing on this matter[116] and also heard extensive arguments at the vexatious motion hearing.[117] TEX. CIV. PRAC. & REM.

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[114] *Id.*, Defendants' Exhibit 6.

[115] RR Vol. 1 36:14-38:19.

[116] CR 663-989.

[117] RR Vol. 1.

CODE § 11.054[118] requires that the movant show there is no reasonable probability that the plaintiff will prevail in the litigation. Beasley argues that the showing must be made through sworn testimony and evidence,[119] but, of course, the statute itself not require any specific way that a movant must make that showing. The trial court may evaluate evidence, the record, and the procedural history to determine if there is a reasonable probability that Beasley would prevail. Moreover, trial courts can and do consider vexatious litigant motions based on purely legal grounds for why a plaintiff cannot prevail. *See e.g., Lagaite v. Pittman*, No. 01-10-00554-CV, 2012 Tex. App. LEXIS 3684, at *13 (Tex. App.—Houston [1st Dist.] May 10, 2012) (affirming a vexatious litigant declaration where the movants raised two legal grounds for why plaintiff could not prevail); *Dolenz v. Boundy,* No. 05-08-01052-CV, 2009 Tex. App. LEXIS 9196, at *4 (Tex. App.—Dallas Dec. 2, 2009) (affirming trial court's determination that plaintiff was vexatious where plaintiff's claims were barred by limitations).

(a) Beasley's Core Claims Were Adjudicated by the Original Case Declaration that SIM-DFW was the Prevailing Party.

Beasley's lawsuit focused heavily on his attempts to judicially overturn the decision of the Executive Committee to expel him. However, the trial court's

[118] Appx. 3.

[119] Brief at 48.

November 3, 2017 Dallas County Judgment in the Original Case[120] declared SIM-DFW a prevailing party on Peter Beasley's declaratory judgment act claims, including the following claim:

> **Declaratory Relief — Expulsion of Beasley Void**.…Beasley seeks a declaratory judgment that the April 19, 2016, meeting of the Executive Committee of the SIM violated SIM's bylaws, violated due process protections under the Texas Constitution and violated applicable provisions of the Texas Business Organizations Code, such that Beasley's purported expulsion was void and of no effect and that his status as both a Board member and a member of SIM were and are unaffected.[121]

SIM-DFW also prevailed on Beasley's other declaratory judgment act claims, including those seeking a declaration that (1) acts of the SIM-DFW Executive Committee since April 19, 2016 are void and (2) SIM-DFW's charitable giving and philanthropy violate SIM-DFW's bylaws and articles of incorporation.[122]

His claims as pled in the Collin County 2017 Case include the *same three* declaratory judgment act claims plus two more. He sought a declaration that both boards were illegally constituted and a declaration that, despite his expulsion, he remains a duly-elected board member.[123] Both of the "new" declaratory judgment

[120] CR 214-216.

[121] CR 36-46, Plaintiff's Sixth Amended Petition at ¶ 20.

[122] *Id.* at ¶¶ 21-22.

[123] CR 629-648, at ¶¶ 71(b) and 71(d).

act claims naturally are subsumed by the Dallas County Judgment declaring SIM-DFW a prevailing party.

The Dallas County Judgment also mooted other portions of Beasley's 2017 Case, including the claims for:

- injunctive relief requesting the appointment of a receiver to manage SIM-DFW's operations (Count 4); [124]
- injunctive relief requesting reinstatement as a Board Member (Count 4);[125] and,
- violation of due process rights with regard to the April 2016 expulsion meeting (Count 7)[126]

Additionally, given the Dallas County Judgment's effect on the core issues raised in the 2017 Case, and the conclusive determination that the expulsion did not violate SIM-DFW's bylaws or due process concerns, Beasley's status as a non-member of SIM-DFW since April 2016 resolves his pending "Breach of Duties/Ultra Vires Acts" claim against Defendants O'Bryan and Burns as well. (Count 13).[127] Beasley asserted that he was presently a "member of SIM with standing" to assert a derivative claim against Defendants O'Bryan and Burns.[128]

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[124] *Id.* at ¶¶ 64-67.

[125] *Id.*

[126] *Id.* at ¶¶ 73-77.

[127] *Id*.

[128] *Id.*, Count 13, at ¶¶ 102-106.

As a matter of law, there is no derivative claim for non-profit corporations. *Bridgewater v. Double Diamond-Delaware, Inc.* 2011 U.S. Dist. LEXIS 47248, *25 (N.D. Tex. April 29, 2011) (holding that the Texas Non-Profit Corporations Act does not provide a derivative suit mechanism against a non-profit by a non-profit's members). But even if there were such a claim, Beasley ***is not a member of SIM-DFW*** and has not been a member since April 2016, mandating the conclusion that he lacked standing to assert that claim.

(b) Even if Beasley's Core Claims Survive the Resolution of the Original Case, the Doctrine of Judicial Non-Intervention Still Controls.

Pursuant to the well-established doctrine of judicial non-intervention, a trial court must not get involved in the daily governance and budget decisions of a private organization absent some clear violation of law, public policy, or action taken in an arbitrary, capricious, or fraudulent manner. *Butler v. Hide-A-Way Lake Club, Inc*., 730 S.W.2d 405, 410 (Tex. App. –Eastland 1987) ("A private, non-profit organization has the right to manage, within legal limits, its own affairs without interference from the courts."); *Harden v. Colonial Country Club*, 634 S.W.2d 56, 59 (Tex.App. –Fort Worth 1982, writ ref'd n.r.e.); *Combs v. Texas State Teachers Association*, 533 S.W.2d 911, 913 (Tex.Civ.App. –Austin 1976, writ ref'd n.r.e.).

SIM-DFW is one such private organization. In March 2016 SIM-DFW determined that Beasley was a distraction to the key goals of the organization, was

actively working against them, and had violated several key membership rules.[129] Initially, SIM-DFW's leadership discussed seeking Beasley's resignation, but before they could meet with Beasley, he sued the organization and its membership.[130] In order to remove Beasley from the Board, the Board of SIM-DFW then sought to expel him from membership.[131]

As noted above, Beasley's expulsion is the crux of his claims against Appellees and a key component of his requested relief is, and has always been, reinstatement to the Board.[132] In fact, in the Original Case Beasley moved for summary judgment within the first six months of litigation seeking a declaration that his expulsion was void. Judge Michael O'Neill, sitting by appointment in the 162nd Judicial District Court of Dallas County, held that the doctrine of judicial non-intervention applied. Referencing the application of the doctrine of judicial non-intervention, he held that "The courts aren't supposed to get involved in these in my view unless there's a due process problem, counting one day as an end point or not generally wouldn't effect due process." Accordingly, Beasley's summary judgment motion was denied.

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[129] September 3, 2019 RR Exhibit, Defendants' Exhibit 22, 76:18-77:6, 78:15-22, 128:24-129:8, 209:1-210:22, 214:18-25; 215:22-216:4.

[130] *Id.*, 184:22 -188:13; CR 181-213.

[131] *Id.*

[132] CR 641-643, ¶¶71a-d.

Thus, the presumption that the doctrine of judicial non-intervention applies cannot now, and could not in September 2018, be overcome by Beasley which was appropriately recognized by the trial court. Texas case law is replete with instances where *membership decisions* like the expulsion of Beasley were left untouched by the Court pursuant to the doctrine of judicial non-intervention, for example:

- *Manning v. The San Antonio Club*, 63 Tex. 166, 169 (1884) — ("The law is well-settled in Texas that **a court will not intervene** in the internal management and disciplinary processes of a private club unless the club violates its own rules and procedures."). (Emphasis added).

- *Screwmen's Benevolent Ass'n v. Benson*, 76 Tex. 552, 13 S.W. 379, 380 (Tex. 1890) — ("A member of a voluntary association is bound by a sentence of expulsion against him lawfully rendered by a tribunal created in pursuance of its constitution and clothed with that power. The rule also applies at least to such incorporated societies as are not organized principally for commercial gain. By uniting with the society the member assents to and accepts the constitution and impliedly binds himself to abide by the decision of such boards as that instrument may provide for the determination of disputes arising within the association. The decisions of these tribunals, when organized under the constitution and lawfully exercising their powers, though they involve the expulsion of a member, are no more subject to collateral attack for mere error than are the judgments of a court of law.").

- *Dallas Athletic Club Protective Comm. v. Dallas Athletic Club,* 407 S.W.2d 849 (Tex. Civ. App. –Dallas 1966, writ ref. n.r.e.) – ("[C]ourts are not disposed to interfere with the internal management of a voluntary association, that the right of such an organization to interpret its own organic agreements, its laws and regulations, after they are made and adopted, is not inferior to its right to make and adopt them, and a member, by becoming such **subjects himself, within legal limits, to his organization's power to administer, as well as the power to make its rules.**"). (Emphasis added).

- *Lawrence v. Ridgewood Country Club*, 635 S.W.2d 665, 666-67 (Tex. App. –Waco 1982, no pet.) –("The law is well-settled in Texas that a court will not intervene in the internal management and disciplinary processes of a private club unless the club violates its own rules and procedures…The reason for this is that club members impliedly agree to abide by the rules of the club when the join it."). (Internal citations omitted).

- *Juarez v. Tex. Ass'n of Sporting Officials El Paso Chapter*, 172 S.W.3d 274, 280 (Tex. App. –El Paso 2005, no pet.) ("[A]n association is free to establish rules of conduct and procedures that apply to membership within the organization. Constant interference by the courts would lead to a virtual inability to function with no independence of purpose.").

- *Whitmire v. Nat'l Cutting Horse Ass'n*., No. 02-08-00176-CV, 2009 Tex. App. LEXIS 5712, at *15 (Tex. App. –Fort Worth July 23, 2009, pet. denied) (mem. op.) (concluding that complaints concerning declaratory relief, breach of contract, fraud, and negligent misrepresentation in case involving membership suspension were "exactly the type of complaints in which Texas courts have declined to intervene").

Because the doctrine of judicial non-intervention applies to Beasley's core claims, he has no reasonable probability of prevailing on the claims as a matter of law, as recognized by the trial court.

(c) Beasley's Remaining Claims in the 2017 Case Also Were Subject to Summary Disposition and the Trial Court Correctly Determined that There was No Reasonable Probability of That Beasley Would Prevail on his Claims.

Beasley's remaining claims fall into three categories: (1) Breach of contract claims against SIM-DFW (Counts 1, 2, and 3); (2) Defamation and tortuous (sic) interference claims against SIM-DFW and its defense counsel (Counts 5, 8, 9, 10); and (3) claims of tortuous (sic) interference with contracts and business

disparagement related to Peter Beasley's company, Netwatch (Counts 11 and 12). There was no reasonable probability Beasley would have prevailed on any of those claims.

The breach of contract type claims were based on Beasley's argument that a "Board Agreement", the bylaws, and unspecified oral representations from SIM-DFW established contractual obligations between SIM-DFW and Beasley to (1) allow him to resign if SIM-DFW believed he was not meeting his board duties and, (2) in the event Beasley became engaged in a legal dispute like the current one with SIM-DFW, allow him to rely on the SIM-DFW Officers & Director's Liability Insurance policy to cover his legal expenses. Testimony provided by Nellson Burns (and accepted as evidence by the trial court)[133] established that the Executive Committee considered seeking Beasley's resignation from the Board both *prior* to and after the original lawsuit was filed. Even after its filing, the Board hoped that a compromise could be reached that would result in his resignation.[134] Ultimately, Beasley's unreasonable demands prevented any request for resignation and the Executive Committee was forced to seek expulsion.[135]

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[133] September 3, 2019 RR Exhibit, Defendants' Exhibit 22.

[134] *Id.* at 184:22-186:15.

[135] *Id.* at 184:22 -188:13.

Next, his claims that SIM-DFW breached its contractual obligations and/or fraudulently induced Beasley to serve as a board member were preposterous. There is no reasonable probability that Beasley would have prevailed on that claim. Eventually, Beasley judicially admitted that the Hartford did provide coverage, which mooted his claim.[136] Moreover, Beasley's current claim that the Hartford engaged in a conspiracy and collaborated with Appellees and their defense counsel to have Beasley declared vexatious is not part of Beasley's pled claims, therefore, Appellees had no obligation to prove that Beasley had no reasonable probability to prevail on this particular "claim." However, the "claim" speaks for itself.

Beasley also claims that he paid membership dues in 2016 and was, as a result of his expulsion, unable to realize the benefits of membership.[137] Expulsion can be understood as the act of depriving someone of membership in an organization. Because the trial court in the Original Case previously declared that SIM-DFW prevailed on Beasley's claim that his expulsion was void and improper, it is axiomatic that the expulsion would deprive him of his membership benefits. That is what expulsion is — removing a member from the organization and the benefits of membership. There is no basis for this claim and given the resolution of the Original Case, no reasonable probability that Beasley would have prevailed on this claim.

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[136] 2nd Supp. CR 140.

[137] CR 639 at ¶ 62.

It did not help that the very written contract he claims was breached was unsigned.[138]

> Bragalone: "So that's his breach of contract claim, it's not signed, it's not a contract. If it's been breached, it's breached by him, because he didn't resign."
>
> **The Court: "Okay. It's unilateral. I mean, in Texas you don't allow unilateral contracts – "**
>
> Bragalone: And there's no proximate cause, because this pertains to him as a board member. He was expelled as a member."
>
> **The Court: "Ok".**[139]

Beasley had no reasonable probability of success on both his oral and written breach of contract claims.

The defamation and tortuous (sic) interference claims were based *exclusively* on communications written by and transmitted by Appellees defense attorneys during the course of the litigation. First, as presented at the hearing on the vexatious litigant motion,[140] at least two of the claimed defamatory statements were determined by Judge Moore to be attorney-client communications.

Secondly, the communications were made by the attorneys in the course of the litigation, and therefore were entitled to judicial immunity. Texas courts have recognized that an absolute privilege extends to publications made in the course of

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[138] RR Vol. 1 39:7-14.

[139] RR Vol. 1 40:19-41:2.

[140] RR Vol. 1 43:4-44:11.

judicial and quasi-judicial proceedings — "meaning that any statement made in the trial of any case, by anyone, cannot constitute the basis for a defamation action, or any other action." *Hernandez v. Hayes*, 931 S.W.2d 648, 650 (Tex. App. –San Antonio 1996, writ denied) (*citing James v. Brown*, 637 S.W.2d 914, 916 (Tex. 1982) (per curiam); *Reagan v. Guardian Life Ins. Co.*, 140 Tex. 105, 166 S.W.2d 909, 912 (1942*)); Lane v. Port Terminal R.R. Ass'n*, 821 S.W.2d 623, 625 (Tex. App. –Houston [14th Dist.] 1991, writ denied) (same); *see Bird v. W.C.W.*, 868 S.W.2d 767, 771-72 (Tex. 1994). The statements made by Appellees lawyers are *per se* not defamatory and cannot support a claim for defamation. Beasley has no reasonable probability of success on this claim.

With regard to the tortuous (sic) interference claim, Beasley believes that Appellee's counsel's communications with Beasley's attorneys over the course of the litigation — putting them on notice of SIM-DFW's intent to seek sanctions — was actionable tortious interference![141] This claim is entirely without merit. As argued extensively in the hearing on the vexatious motion,[142] the record is clear that on at least three instances Beasley terminated his attorneys.[143] There is no

[141] CR 644-645 at ¶78-89.

[142] RR Vol. 1 47:7-48:14.

[143] CR 942-967.

reasonable probability that Beasley would have prevailed on this claim and the trial court was correct to recognize it.

Beasley's only remaining claims are not his. They are those that properly belong to his company, Netwatch Solutions. In a clear and obvious attempt to avoid having to retain counsel, Beasley claimed he had standing to sue on behalf of his company because he is the sole owner. A corporation must sue on its own behalf for damages owed to it. Beasley conceded, under oath, that at least a portion of his claimed damages in the ongoing litigation were "really Netwatch's damages"[144] which proved he lacked both standing and capacity to sue on Netwatch's behalf.

Moreover, to the extent Beasley believes he still has a basis to assert that Appellee Nellson Burns tortiously interfered with his prior employer's contract with Netwatch Solutions, this allegation was **completely defeated** by HollyFrontier's affidavit[145] which confirmed that the Netwatch contract with HollyFrontier was not cancelled in 2016 when the litigation arose, was paid in full for both 2016 and 2017, and HollyFrontier's determination to "wind down" its business relationship with Netwatch actually was due to Peter Beasley's vexatious litigation behavior. [146]

[144] September 3, 2019 RR Exhibits, Defendants' Exhibit 23 at 204:10-23.

[145] September 3, 2019 RR Exhibits, Defendants' Exhibit 24.

[146] *Id.*

As demonstrated above, and presented at the hearing on September 20, 2018, none of Beasley's claims against Appellees was meritorious. Most were easily disposed of as a matter of law, either by application of the doctrine of judicial non-intervention or by other relevant Texas jurisprudence. His argument that Appellees were required to present sworn testimony and evidence to defeat his claims is simply wrong. A vexatious litigant determination is a factual inquiry that turns, in each case, on the facts before the trial court. His reliance on the fact patterns of other vexatious litigant cases is unpersuasive.

For example, Beasley cites *Amir-Sharif v. Quick Trip Corp.*, 416 S.W.3d 914 (Tex.App. –Dallas 2013, no pet. h.), for the proposition that a movant is required to offer sworn testimony and evidence in support of its motion.[147] However, *Amir-Sharif* involved a premises liability claim, a slip and fall in a convenience store. 416 S.W.3d at 916. Naturally, to show that Amir-Sharif had no reasonable possibility of prevailing on a premises liability claim, Quick Trip, the movant, would need to demonstrate to the trial court that one or all of the elements of a premises liability claim could not be met by Amir-Sharif. Amir-Sharif, though he was not required to, provided the trial court with medical records of his injury, documentation of his communications with Quick-Trip's accident claims department, and a statement made by a Quick-Trip employee. 416 S.W.3d at 920. From that information the trial

[147] Brief at 48.

court could have inferred that Amir-Sharif would be able to establish both the dangerous condition (liquid on the floor) and defendants' constructive knowledge of the condition. Moreover, in response to Amir-Sharif's proffer, Quick Trip offered nothing — no contrary evidence disputing the existence of the dangerous condition and/or the knowledge element. *Id.* Under those circumstances, it is not at all surprising that the Court of Appeals would reverse the trial court and find that the evidence was legally insufficient to support the vexatious litigant order. *Id.* at 921.

Here, Beasley's claims are all subject to legal attacks. The necessary sworn testimony was provided in deposition form by Appellee Nellson Burns,[148] and Appellant Beasley.[149] That testimony, combined with well-established legal doctrines and arguments of counsel, allowed the trial court to determine that there was no reasonable probability that Beasley would prevail on his claims. Nothing in the record or Beasley's briefing supports reversal of the trial court's determination.

D. The Vexatious Litigant Statute is Constitutional.

Beasley appears to raise several arguments regarding the constitutionality of the vexatious litigant statute, and then somewhat abandons them in the last pages of his briefing.[150] His points on appeal identify several portions of the vexatious litigant

[148] September 3, 2019 RR Exhibits, Defendants' Exhibit 22.

[149] September 3, 2019 RR Exhibits, Defendants' Exhibit 23.

[150] Brief at 76-81.

statute that he believes are unconstitutionally vague or overbroad. He also argues that the trial court's application of *Drum v. Calhoun*, 299 S.W.3d 360 (Tex.App. – Dallas 2009, pet. denied) denied him due process in having post-declaration hearings in Dallas County. Beasley also argues that the prefiling order prevents him from accessing the *ex parte* protections afforded to parties seeking protective orders and injunctive relief.

Texas courts have repeatedly held that the vexatious litigant statute is constitutional.

Beasley is not prevented from access to the Courts by being on the Texas Supreme Court Office of Court Administration ("OCA") list, he is only prevented from *pro se* litigation without the approval of the local administrative judge. Alternatively, Beasley may retain an attorney, something that his litigation history reveals he is more than comfortable doing when his needs require it.

The vexatious litigant statute is a means to "attempt to strike a balance between Texans' right of access to their courts and the public interest in protecting defendants from those who abuse the Texas court system by systematically filing lawsuits with little or no merit." *Retzlaff v. GoAmerica Commc'ns Corp*., 356 S.W.3d 689, 697 (Tex. App. –El Paso 2011, no pet.) (*quoting Sweed v. Nye*, 319 S.W.3d 791, 793 (Tex. App. –El Paso 2010, pet. denied)). As such, no equal protection challenge against the statute has ever been successful. *See e.g., Leonard v. Abbott*,

171 S.W.3d 451, 458 (Tex.App. –Austin 2005, pet. denied) ("The [vexatious litigant] statute does not discriminate against pro se litigants or the Davids who sue Goliaths.…Chapter 11 does not unlawfully discriminate against *pro se* litigants….)"; *Sparkman v. Microsoft Corp.*,2015 Tex.App. LEXIS 2510, *11-12 (Tex.App. –Tyler, March 18, 2015, pet. denied).

E. The Security Amount Set by the Trial Court is Reasonable Under These Extreme and Unusual Circumstances.

Beasley argues that the Court had no evidence to support the security amount of $422,064.00.[151] Appellees argued to the trial court that that amount represented the amount of fees incurred in defending the Original Case against Beasley.[152] Part of the evidence provided to the Court included all of pleadings filed by Beasley in the Original Case which demonstrated the nature of Beasley's claims in the Original Case and the overlap between those claims and the claims being urged in the 2017 Case.

TEXAS CIVIL PRACTICE & REMEDIES CODE Chapter 11 states that "[a] court **shall** order the plaintiff to furnish security for the benefit of the moving defendant if the court, after hearing evidence on the motion, determines that the plaintiff is a vexatious litigant. § 11.055(a) (Emphasis added).[153] The court has discretion to

[151] Brief at 56.

[152] RR Vol. 1 62:15-63:17.

[153] Appx. 4.

determine the security amount. § 11.055 (b).[154] Further, "[t]he court **shall** provide that the security is an undertaking by the plaintiff to assure payment to the moving defendant of the moving defendant's reasonable expense incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees. § 11.055(c) (Emphasis added).[155]

While Beasley is loathe to admit it, the fact that Appellees had already incurred fees of $422,064 in connection with the defense of claims commenced by Beasley is conclusive evidence of the amount of expenses and fees it takes to defend against Beasley's frivolous and vexatious claims. The amount of fees incurred in the wake of the decision and on appeal has matched the original amount incurred as of the hearing. The waste of resources here is unparalleled.

Notably, the reporter's record of the vexatious hearing contains no objection whatsoever to Appellees request. Beasley's second set of attorneys also failed to raise any objection to the amount of the security. On appeal Beasley relies on argument regarding the amount that other vexatious litigants have been ordered to pay, but as noted above, each vexatious litigant determination turns on its own facts. There is no basis to claim, as Beasley does, that because another vexatious litigant

[154] *Id.*

[155] Appx. 4.

in another trial court with different claims and facing a different vexatious litigant motion was only ordered to pay $10,000 in security so too should Beasley have been ordered to pay a low five-figure amount.[156] As Chapter 11 states, the trial court has discretion to determine the security amount. This Court should affirm the security amount.

Additionally, Beasley's failure to pay the ordered security required dismissal of Beasley's claims. The vexatious litigant statute is clear, TEX. CIV. PRAC. & REM. CODE § 11.056 states, "[t]he court **shall** dismiss a litigation as to the moving defendant if a plaintiff ordered to furnish security does not furnish the security within the time set by the order."[157] (Emphasis added). Beasley did not pay the security. And while Appellees do not concede that any such request would be permissible, he likewise failed to request any extension of time to pay the security or make any request to any court for a reduction in the amount of the ordered security. He merely allowed the deadline for payment of the security to run and now appeals the dismissal. This is undisputed. On appeal, he argues that the dismissal is improper

[156] Appellees also note that in one recent case, not cited or otherwise referred to by Beasley, this Court affirmed a vexatious litigant determination where the vexatious litigant had been ordered to pay $160,000 in security. *Amrhein v. Bollinger*, 2019 Tex.App. LEXIS 8883, *2 (Tex.App.—Dallas Oct. 3, 2019).

[157] Appx. 4.

because the trial court abused its discretion,[158] but the statute does not afford the trial court any discretion when the plaintiff fails to pay the ordered security. *Amrhein v. Bollinger*, 2019 Tex.App. LEXIS 8883, *9 (Tex.App.—Dallas Oct. 3, 2019) ("If the plaintiff does not timely furnish the security, the trial court has no option but to dismiss the litigation as to the defendant who filed the motion.").

The dismissal should be affirmed.

F. Appellees Nonsuit of their Counterclaims is Wholly Irrelevant to the Determination of the Vexatious Litigant Motion.

Beasley argues that Appellees' nonsuit of their own counterclaims on April 5, 2019 is somehow evidence of Appellees' withdrawal of the vexatious litigant determination that had been made nearly four months prior. This is another nonsense argument. Appellees nonsuit of their counterclaims had no effect whatsoever on the determination that Beasley is a vexatious litigant. Beasley incorrectly argues that the Vexatious motion was a counterclaim. It was not. And the transcript from the hearing makes it abundantly clear that the counterclaims were being nonsuited to permit the Vexatious Judgment to become final.[159]

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[158] Beasley only makes this argument in the Table of Contents, *see* Brief at vi. Beasley's briefing fails to address this point on appeal but Appellees respond to the appellate point out of an abundance of caution.

[159] May 31, 2019 Supp. RR Vol. 1 (Motion to Reconsider and Motion to Seal) 79:23-80:9; 80:23-81:7.

G. The Automatic Stay Imposed by the Vexatious Litigant Statute Precluded Hearings on any of Beasley's Ancillary Motions Until Beasley Paid the Required Security.

TEX. CIV. PRAC. & REM. CODE § 11.052(a)(2) states: "On the filing of a motion under § 11.051, the litigation is stayed and the moving defendant is not required to plead if the motion is granted, before the 10th day after the date the moving defendant receives written notice that the plaintiff has furnished the required security."[160] *See also, Drum v. Calhoun*, 299 S.W.3d 360, 369 (Tex.App. —Dallas 2009) (pet. denied) (when a vexatious litigant motion is granted, the litigation remains stayed as a matter of statutory law until the vexatious litigant posts the required security); *Willms v. Ams. Tire Co.*, 190 S.W.3d 796, 804 (Tex. App. –Dallas 2006) (pet. denied) ("When a defendant files a motion pursuant to section 11.051, the litigation is stayed until the tenth day after the motion is denied or the tenth day after the defendant receives notice that the plaintiff has furnished the required security.").

The stay went into effect the moment Appellees filed the motion to declare Beasley vexatious. Thus, the trial court's determination that the 2018 Rule 12 and attorney disqualification motions were stayed was correct. Moreover, after Beasley was declared vexatious, Beasley **never paid the security required** by the trial court's December 11, 2018 Order. Accordingly, the case remained stayed and the

[160] Appx. 2.

trial court was powerless to hear Beasley's 2019 Rule 12 Motions, Motions to Disqualify and Recuse, and various other frivolous ancillary motions filed by Beasley between December 11, 2018 and the date the case was finally dismissed on June 11, 2019.

In fact, his failure to pay the required security was dispositive and the trial court was required to dismiss his claims with prejudice per TEX. CIV. PRAC. & REM. CODE § 11.056.[161] *See also, Gant v. Grand Prairie Ford, L.P.,* No. 02-06-00386-CV, 2007 Tex.App. LEXIS 5727, 2007 WL 2067753, *9 (Tex.App. –Fort Worth July 19, 2007) (pet. denied) (after trial court declared plaintiff a vexatious litigant, trial court had a duty as a matter of statutory law to dismiss plaintiff's lawsuit after plaintiff failed to furnish required security within time ordered). His complaints on appeal that the trial court (and this Court in denying temporary orders) was engaged in constitutional violations to deny Beasley access to the courts is par for the course for this vexatious litigant.

H. Beasley's Unsupported and Offensive Rhetoric Should Be Ignored by this Court.

Beasley's briefing is littered with casual references to violence, disturbing imagery, and offensive rhetoric. While he has removed the conspiracy and disqualification allegations he leveled against Judges Slaughter, Purdy, Goldstein

[161] Appx. 4.

and Moore in his now superseded interlocutory appeal, the continued characterization of the judiciary and character attacks on Appellees' defense counsel reveal just how vexatious he is. His casual references invoking the TimesUp! and Black Lives Matter movements diminish the significance of both movements and the very real issues both seek to address. His comparison of his vexatious litigant status to being falsely accused of rape is offensive to sexual assault victims everywhere. And the allegations of discrimination by SIM-DFW, members of the Texas bar, and Dallas County Judiciary are unsupported, equally absurd, are not part of the claims on appeal. In typical vexatious fashion, Beasley levels blame at everyone but himself.

There is no conspiracy outside of his mind and no fraud was perpetrated on the trial court. Beasley's allegations regarding the so-called extrinsic fraud, his betrayal by his attorneys, and the claim of insurance fraud are unsupported and are not properly before this Court.

VII.
CONCLUSION & PRAYER

An appellate court reviews a vexatious litigant determination under an abuse of discretion standard. Under this standard, the court of appeals will view the evidence in the light most favorable to the trial court's order and indulge every

presumption in the judge's favor. *Garner v. Garner*, 200 S.W.3d 303, 306, 308 (Tex. App. –Dallas 2006, no pet.) (clarifying the abuse of discretion standard).

Appellees established at the hearing on the vexatious litigant motion that Appellant Peter Beasley meets the definition of a vexatious litigant pursuant to Chapter 11 of the TEXAS CIVIL PRACTICE & REMEDIES CODE. Appellees request that this Court affirm the trial court's determination, affirm the dismissal of Appellant's claims with prejudice, and uphold the trial court's determination in all respects.

CERTIFICATE OF COMPLIANCE

I certify that the foregoing instrument was prepared using Microsoft Word 2010, and that, according to its word-count function, the sections of the foregoing reply brief covered by TRAP 9.4(i)(1) contain 12,257 words.

/s/ Soña J. Garcia
Soña J. Garcia

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served via the electronic noticing system on November 21, 2019.

/s/ Soña J. Garcia
Soña J. Garcia

APPENDIX

voluntary dismissal or settlement of the claims made by or against the party or the party's attorney who is to be sanctioned.

(f) The filing of a general denial under Rule 92, Texas Rules of Civil Procedure, shall not be deemed a violation of this chapter.

Added by Acts 1995, 74th Leg., ch. 137, Sec. 1, eff. Sept. 1, 1995.

Sec. 10.005. ORDER. A court shall describe in an order imposing a sanction under this chapter the conduct the court has determined violated Section 10.001 and explain the basis for the sanction imposed.

Added by Acts 1995, 74th Leg., ch. 137, Sec. 1, eff. Sept. 1, 1995.

Sec. 10.006. CONFLICT. Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this chapter.

Added by Acts 1995, 74th Leg., ch. 137, Sec. 1, eff. Sept. 1, 1995.

CHAPTER 11. VEXATIOUS LITIGANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 11.001. DEFINITIONS. In this chapter:

(1) "Defendant" means a person or governmental entity against whom a plaintiff commences or maintains or seeks to commence or maintain a litigation.

(2) "Litigation" means a civil action commenced, maintained, or pending in any state or federal court.

(3) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1224, Sec. 10, eff. September 1, 2013.

(4) "Moving defendant" means a defendant who moves for an order under Section 11.051 determining that a plaintiff is a vexatious litigant and requesting security.

(5) "Plaintiff" means an individual who commences or maintains a litigation pro se.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.01, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 10, eff. September 1, 2013.

Sec. 11.002. APPLICABILITY. (a) This chapter does not apply to an attorney licensed to practice law in this state unless the attorney proceeds pro se.

(b) This chapter does not apply to a municipal court.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 2, eff. September 1, 2013.

SUBCHAPTER B. VEXATIOUS LITIGANTS

Sec. 11.051. MOTION FOR ORDER DETERMINING PLAINTIFF A VEXATIOUS LITIGANT AND REQUESTING SECURITY. In a litigation in this state, the defendant may, on or before the 90th day after the date the defendant files the original answer or makes a special appearance, move the court for an order:

(1) determining that the plaintiff is a vexatious litigant; and

(2) requiring the plaintiff to furnish security.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.052. STAY OF PROCEEDINGS ON FILING OF MOTION. (a) On the filing of a motion under Section 11.051, the litigation is stayed and the moving defendant is not required to plead:

(1) if the motion is denied, before the 10th day after the date it is denied; or

(2) if the motion is granted, before the 10th day after the date the moving defendant receives written notice that the plaintiff has furnished the required security.

(b) On the filing of a motion under Section 11.051 on or after the date the trial starts, the litigation is stayed for a period the court determines.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.053. HEARING. (a) On receipt of a motion under Section 11.051, the court shall, after notice to all parties, conduct a hearing to determine whether to grant the motion.

(b) The court may consider any evidence material to the ground of the motion, including:

(1) written or oral evidence; and

(2) evidence presented by witnesses or by affidavit.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.054. CRITERIA FOR FINDING PLAINTIFF A VEXATIOUS LITIGANT. A court may find a plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that:

(1) the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in a small claims court that have been:

(A) finally determined adversely to the plaintiff;

(B) permitted to remain pending at least two years without having been brought to trial or hearing; or

(C) determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure;

(2) after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, either:

(A) the validity of the determination against the same defendant as to whom the litigation was finally determined; or

(B) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined; or

(3) the plaintiff has previously been declared to be a

vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 3, eff. September 1, 2013.

Sec. 11.055. SECURITY. (a) A court shall order the plaintiff to furnish security for the benefit of the moving defendant if the court, after hearing the evidence on the motion, determines that the plaintiff is a vexatious litigant.

(b) The court in its discretion shall determine the date by which the security must be furnished.

(c) The court shall provide that the security is an undertaking by the plaintiff to assure payment to the moving defendant of the moving defendant's reasonable expenses incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.056. DISMISSAL FOR FAILURE TO FURNISH SECURITY. The court shall dismiss a litigation as to a moving defendant if a plaintiff ordered to furnish security does not furnish the security within the time set by the order.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.057. DISMISSAL ON THE MERITS. If the litigation is dismissed on its merits, the moving defendant has recourse to the security furnished by the plaintiff in an amount determined by the court.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER C. PROHIBITING FILING OF NEW LITIGATION

Sec. 11.101. PREFILING ORDER; CONTEMPT. (a) A court may, on its own motion or the motion of any party, enter an order prohibiting a person from filing, pro se, a new litigation in a court to which the order applies under this section without permission of the appropriate local administrative judge described by Section 11.102(a) to file the litigation if the court finds, after notice and hearing as provided by Subchapter B, that the person is a vexatious litigant.

(b) A person who disobeys an order under Subsection (a) is subject to contempt of court.

(c) A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious litigant.

(d) A prefiling order entered under Subsection (a) by a justice or constitutional county court applies only to the court that entered the order.

(e) A prefiling order entered under Subsection (a) by a district or statutory county court applies to each court in this state.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.02, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 4, eff. September 1, 2013.

Sec. 11.102. PERMISSION BY LOCAL ADMINISTRATIVE JUDGE. (a) A vexatious litigant subject to a prefiling order under Section 11.101 is prohibited from filing, pro se, new litigation in a court to which the order applies without seeking the permission of:

(1) the local administrative judge of the type of court in which the vexatious litigant intends to file, except as provided by Subdivision (2); or

(2) the local administrative district judge of the county in which the vexatious litigant intends to file if the litigant intends to file in a justice or constitutional county court.

(b) A vexatious litigant subject to a prefiling order under Section 11.101 who files a request seeking permission to file a

litigation shall provide a copy of the request to all defendants named in the proposed litigation.

(c) The appropriate local administrative judge described by Subsection (a) may make a determination on the request with or without a hearing. If the judge determines that a hearing is necessary, the judge may require that the vexatious litigant filing a request under Subsection (b) provide notice of the hearing to all defendants named in the proposed litigation.

(d) The appropriate local administrative judge described by Subsection (a) may grant permission to a vexatious litigant subject to a prefiling order under Section 11.101 to file a litigation only if it appears to the judge that the litigation:

(1) has merit; and

(2) has not been filed for the purposes of harassment or delay.

(e) The appropriate local administrative judge described by Subsection (a) may condition permission on the furnishing of security for the benefit of the defendant as provided in Subchapter B.

(f) A decision of the appropriate local administrative judge described by Subsection (a) denying a litigant permission to file a litigation under Subsection (d), or conditioning permission to file a litigation on the furnishing of security under Subsection (e), is not grounds for appeal, except that the litigant may apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision. The denial of a writ of mandamus by the court of appeals is not grounds for appeal to the supreme court or court of criminal appeals.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.03, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 5, eff. September 1, 2013.

Sec. 11.103. DUTIES OF CLERK. (a) Except as provided by Subsection (d), a clerk of a court may not file a litigation, original proceeding, appeal, or other claim presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101

unless the litigant obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1224, Sec. 10, eff. September 1, 2013.

(c) If the appropriate local administrative judge described by Section 11.102(a) issues an order permitting the filing of the litigation, the litigation remains stayed and the defendant need not plead until the 10th day after the date the defendant is served with a copy of the order.

(d) A clerk of a court of appeals may file an appeal from a prefiling order entered under Section 11.101 designating a person a vexatious litigant or a timely filed writ of mandamus under Section 11.102.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.04, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 7, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 10, eff. September 1, 2013.

Sec. 11.1035. MISTAKEN FILING. (a) If the clerk mistakenly files litigation presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 without an order from the appropriate local administrative judge described by Section 11.102(a), any party may file with the clerk and serve on the plaintiff and the other parties to the litigation a notice stating that the plaintiff is a vexatious litigant required to obtain permission under Section 11.102 to file litigation.

(b) Not later than the next business day after the date the clerk receives notice that a vexatious litigant subject to a prefiling order under Section 11.101 has filed, pro se, litigation without obtaining an order from the appropriate local administrative judge described by Section 11.102(a), the clerk shall notify the

court that the litigation was mistakenly filed. On receiving notice from the clerk, the court shall immediately stay the litigation and shall dismiss the litigation unless the plaintiff, not later than the 10th day after the date the notice is filed, obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing of the litigation.

(c) An order dismissing litigation that was mistakenly filed by a clerk may not be appealed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 8, eff. September 1, 2013.

Sec. 11.104. NOTICE TO OFFICE OF COURT ADMINISTRATION; DISSEMINATION OF LIST. (a) A clerk of a court shall provide the Office of Court Administration of the Texas Judicial System a copy of any prefiling order issued under Section 11.101 not later than the 30th day after the date the prefiling order is signed.

(b) The Office of Court Administration of the Texas Judicial System shall post on the agency's Internet website a list of vexatious litigants subject to prefiling orders under Section 11.101. On request of a person designated a vexatious litigant, the list shall indicate whether the person designated a vexatious litigant has filed an appeal of that designation.

(c) The Office of Court Administration of the Texas Judicial System may not remove the name of a vexatious litigant subject to a prefiling order under Section 11.101 from the agency's Internet website unless the office receives a written order from the court that entered the prefiling order or from an appellate court. An order of removal affects only a prefiling order entered under Section 11.101 by the same court. A court of appeals decision reversing a prefiling order entered under Section 11.101 affects only the validity of an order entered by the reversed court.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.05, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 9, eff. September 1, 2013.